U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: March 12, 1991
CASE NO. 90-ERA-49

IN THE MATTER OF

ROBERT W. VOGEL,
COMPLAINANT,

v.

FLORIDA POWER CORPORATION AND
FLUOR CONSTRUCTORS, INC.[1]
RESPONDENTS.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT

Before me for review is the Recommended Decision and Order Accepting the Parties' Settlement Agreement and Dismissal of the Complaint with Prejudice, issued January 8, 1991, by Administrative Law Judge (ALJ) Michael P. Lesniak in the above- captioned case, which arises under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988). The ALJ reviewed the Settlement Agreement in Full and Final Release of All Claims (the agreement), as well as the parties' offer of proof presented at the hearing, and concluded that the agreement was fair, adequate

and reasonable. *See Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, March 23, 1989, slip op. at 1-2. The ALJ accordingly recommended that the agreement be accepted and the case dismissed with prejudice.

Review of the agreement reveals that it appears to encompass the settlement of matters under various laws, only one of which is the ERA. *See, e.g.*, Settlement Agreement ¶¶. 4, 7. As stated in *Poulos v. Ambassador Fuel Oil Co.. Inc*., Case No. 86-CAA-1, Sec. Order, November 2, 1987, slip op. at 2:

> [The Secretary's] authority over settlement agreements is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute. *See Aurich v. Consolidated Edison Company of New York. Inc*., Case No. [86-]CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncombe County, N.C.*, Case No. 85-SWD-4, Secretary's Decision and Order on Remand, issued November 3, 1986.

I have, therefore, limited my review of the agreement to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegation that Respondents violated the ERA.

Regarding Paragraph 6 of the agreement, in which the parties agree to maintain the strictest confidentiality of the terms of the agreement, the parties at the hearing asked the ALJ to keep the agreement under seal if possible, but that if it were not possible, the parties stated that it would not cause the agreement to fail. T. 4-8. In view of the parties' agreement that the settlement will not fail if not kept under seal, the agreement has been unsealed and incorporated into the administrative record of the case.[2]

Upon review of the terms of the agreement signed by the parties, and based on the record of this case, I find that the agreement is fair, adequate and reasonable. I therefore accept the ALJ's recommendation that the agreement be accepted. Accordingly this case is DISMISSED.

SO ORDERED.

LYNN MARTIN
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1]The caption is hereby corrected to Fluor Constructors, Inc. *See* Hearing Transcript (T.), 4; Settlement Agreement in Full and Final Release of All Claims, p.1.

[2]Whatever legal test for sealing a record may arguably apply, the parties have not presented any reasons for doing so in this case.